KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2011/2012

SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAW

LCC 303: INSURANCE LAW

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DATE: THURSDAY 19TH APRIL 2012 TIME: 12.00 P.M. – 2.00 P.M.

INSTRUCTIONS

1) **Answer question ONE and TWO other questions**
2) **You will be penalised for failing to answer question one**
3) **Support your answer with relevant case law, statutes and any other relevant references**
4) **Write neatly and legibly**
5) **Your answer sheet must bear your student registration number**

QUESTION 1

(a) The Claims Manager of Perfect Insurance Company Limited has sent you an e-mail narrating the following facts.

"A customer took out a commercial motor insurance policy in respect of motor vehicle KAA 1234C, a Nissan Minibus. The policy was effective from 25/10/2010 to 24/10/2011. The customer completed a proposal form in which he declared that the motor vehicle would be used to carry own goods only and would not be used to carry passengers for hire. The Company accepted the proposal and agreed to issue insurance cover.

The customer paid the premium and then issued a cover for third party risks only and issued a certificate of insurance and subsequently a policy document was issued.

On 6/3/2011, during the currency of the policy, the motor vehicle was involved in a self-involving accident (no other vehicle was involved)) at around 5 pm on the Nakuru- Nairobi Road. The insured declared that at the time of the accident he was traveling to Nairobi to ferry his won goods.

Subsequently the company received a Statutory Notice dated 17/7/2011 and a Plaint in Naivasha RMCC 11111/2011 in which the insured was named as the defendant. The Plaintiff was one Tabitha Wawetu. Tabitha described herself in the plaint as a fare-paying passenger.

The Company did not involve itself in the suit. It has now received a demand letter requiring it to satisfy a decree under the provisions of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405."

The Claims Manager requires your urgent advise.

With the aid of decided cases and citing relevant statutory provisions advise the Claims Manager regarding the legal position. (20 Marks)

(b) "The common law on insurance is unduly biased against the insured" Discuss this statement supporting your answer with specific examples. (10 Marks)

QUESTION 2

"In case of goods, or other property, insurable interest may be based on ownership and this ownership may be either sole or joint, absolute or limited; legal or equitable. Ownership is not however, necessary, insurable interest may be founded on contract…."
Ivamy General Principles of Insurance Law

Discuss this statement. In your answer distinguish clearly between the approaches to insurable interest in insurance not dealing with property. (20 Marks)

QUESTION 3

(a) Discuss in detail the regulatory framework of insurance business in Kenya (10 marks)

(b) What specific recommendations would you make for improved regulation of the insurance sector? (10 Marks)

QUESTION 4

"One overriding factor in insurance is that the insured shall only be indemnified but shall not be more than indemnified"

Discuss this statement. (20 marks)

QUESTION 5

Write brief notes on <u>any four</u> of the following

(a) Subrogation (5 marks)

(b) Termination of Insurance Cover (5 marks)

(c) Reinstatement (5 marks)

(d) Cover Note (5 marks)

(e) Islamic Insurance (5 marks)